
CHAPTER 14 UTILITY RELOCATIONS

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CHAPTER 14 UTILITY RELOCATIONS

14.1 INTRODUCTION

The procedures in this chapter have been designed to comply with the FHWA's regulations and requirements under Code of the Federal Regulations (CFR) governing utility relocations. The purpose of this chapter is to provide guidelines to the local agency when performing Right of Way Utility Relocations on projects outside of the State Highway System (SHS) and financed with federal funds ("Off-System" project).

Utility Relocation procedures in this chapter only apply when relocating public utility facilities that serve the general public. Service connections and private utilities are handled through Right of Way Acquisition under Cost to Cure (23 CFR 710.203.)

Forms and Exhibits included in this chapter are to provide the local agency with working samples. The language in these forms has been reviewed and approved by Caltrans Legal Department. The local agency has the option to modify the format of these forms or to use its own forms. However, the local agency's own forms have to satisfy all required elements under 23 CFR 645.113, and the use of non-approved forms and clauses will require reviewing and approval by Caltrans Legal Department on a case-by-case basis.

For any locally sponsored project that involves any portion of a state's right of way under a Cooperative Agreement ("On System" Project), Right of Way Utility Relocations will be accomplished in accordance with the Utility Procedures described in the *Caltrans Right of Way Manual* (ROW Manual) and *Encroachment Permits Manual*.

These manuals are available online at the following URLs:

ROW Manual:

<http://www.dot.ca.gov/hq/row/rowman/manual/>

Encroachment Permits Manual:

http://www.dot.ca.gov/hq/traffops/developserv/permits/encroachment_permits_manual/

DEFINITIONS

Public Utility Facilities - publicly and privately owned utility facilities, which serve the public.

Impacted Utility Facility - a public utility facility has been identified as in conflict with the proposed activity of a transportation project.

Utility Relocation - any adjustment to the impacted utility facility required by the proposed transportation project.

Owner - utility company, municipal utility department, who owns the impacted facility.

Utility Coordinator - local agency's person who acts as a liaison with owners.

District Utility Coordinator: Caltrans Right of Way Utility Coordinator assigned to this project.

Conflict Resolution Plan - (a.k.a. Relocation Plan) plan from owner to resolve the conflict with activity of a transportation project. This plan should clearly define scope of work and the duration of construction.

Claim Letter - owner's liability determination along with supporting documentations. It is the owner's responsibility to support their claim.

Unanticipated Utility Relocation – unforeseen, or discovery utility relocations as a result of accident or incomplete utility verification/conflict identification.

UTILITY RELOCATION PROCEDURES

The following steps have been modeled after the Caltrans Right of Way Utility Relocations procedures. These activities are performed in different stages of project development (see Exhibit 14-H, "Stages of R/W Utilities Through Stages of Project Development") to ensure proper and complete utility clearance prior to Right of Way Certification.

This procedure is designed to identify utility conflicts early in the design stage. It provides the Project Engineer with an opportunity to evaluate the proposed plan and make adjustments to avoid or lessen the impact on existing utility facilities. Thus, it reduces utility relocation cost, saves time, and prevents discovery conflicts during construction.

It is strongly recommended that each local agency adopt and follow these procedures:

UTILITY VERIFICATION:

- In the early phase of the Design process, the Utility Coordinator sends a proposed project plan to owner and request for owners' facility map(s) of any facility located within project limits.

Utility Coordinator forwards owners' map(s) to the Project Engineer. The Project Engineer plots all existing facilities onto UTILITY SHEET (refer to Caltrans *Design's Standard Plan* or *American Society of Civil Engineers [ASCE], Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data*).

IDENTIFYING CONFLICT:

- Project Engineer identifies all impacted utility facilities within project limits.
- Provide conflict maps for each impacted facility to the Utility Coordinator.

REQUESTING CONFLICT RESOLUTION PLAN: (This step would be done only after National Environmental Policy Act [NEPA] approval.)

- Utility Coordinator contacts and informs the owner(s) of the conflict(s) and requests conflict resolution plan(s), detail cost estimate(s), and owner's liability determination.
- When the above items are received from owner(s), the Utility Coordinator will forward the plan(s) to the Project Engineer for approval.

LIABILITY DETERMINATION:

After the conflict resolution plan(s) is approved by the Project Engineer:

- A liability determination must be made to determine whether the local agency is legally liable for any portion or all of the relocation cost. (See Chapter 13, "Utility Relocation," Section 13.04.00 of ROW Manual for guidance.)

- Liability can be determined by property rights, franchise rights/agreements, state and local statutes/ordinances, permits, or finding by the local agency's counsel.
- Complete "Report of Investigation" (ROI) (see Exhibit 14-E.) This is the document that determines the local agency's liability for relocation costs.
- The cost of relocating such facilities is eligible for federal participation:
 - a) Only when the relocation is made necessary by the proposed construction.
 - b) Only when the local agency is legally liable to pay for any portion of the relocation.

Utility Coordinator shall send proposed copy of ROI, Notice to Owner (NTO), and Utility Agreement to District Local Assistance Engineer (DLAE) and Caltrans District Utility Coordinator for review and approval, prior to sending out to owner.

NOTE: For an "On-System" project, the local agency must ensure that all utility relocations and encroachments are accomplished in accordance with Caltrans policies, procedures, standards, practices, and statutes. In addition, any existing agreements or contracts between the Department of Transportation (Caltrans) and a utility owner will also obligate the local agency in such circumstances.

NOTIFYING OWNER:

- After the conflict resolution plan is approved and liability is determined, Utility Coordinator shall seek concurrence from the owner in case the liability determination is different from owner's claim letter.
- Once the owner concurs with liability (this is referred to as "Meeting of the Minds"), the Utility Coordinator will issue a written NTO ("Notice to Owner," see Exhibit 14-D) to the owner. The local agency must make all necessary arrangements with the owners of affected utility facilities for their relocations.
- The NTO will clearly define the impacted facility, owner's conflict resolution plan number and date, estimated completion date, and liabilities.
- The local agency shall provide all other necessary permit(s) related to the relocation to the owner prior to the commencing of work. **Only when any ordered work is located within the SHS, a Caltrans Encroachment Permit is required.** Utility Coordinator can request the permit through the Caltrans District Utility Coordinator.
- If the local agency is liable for any portion of the relocation, a Utility Agreement (see Exhibit 14-F, "Utility Agreements" and Exhibit 14-G, "Utility Agreement Clauses") will also be prepared and sent to owner along with the NTO.
- The local agency's liability portion and authority to pay for the relocation must be clearly cited in its Utility Agreement and in the "liability" section of the NTO.

NOTE: For an "On-System" project, on freeway projects, state policy and procedure take precedence for cost liability determination even where relocation work to support or accommodate the project may take place outside of the state's right of way.

RIGHT OF WAY UTILITY CLEARANCE MEMO:

- Once all utility conflicts have been resolved, the Project Engineer and the Utility Coordinator will issue a Utility Clearance Memo that clearly lists all conflicts, locations, the NTO numbers and issued date, liability, and estimated completion date.
- The information on this memo will be incorporated into the Right of Way Certification.

MANAGING THE PHYSICAL RELOCATION:

- Prior to any physical relocation work being commenced, the Project Engineer and Utility Coordinator shall make sure all agreements have been executed, Specific Authorization/Approval of Utility Agreement has been approved (if federal funding is sought), and funding has been secured.
- Project Engineer and Utility Coordinator shall monitor the progress and verify that the relocation has been carried out according to the conflict resolution plan and schedule.

MANAGING RELOCATION INVOICES:

- The Utility Coordinator will process utility relocation invoices for reimbursement in accordance to the procedures described in Chapter 5, “Accounting/Invoices,” of the *Local Assistance Procedures Manual* (LAPM).
- Project Engineer and Utility Coordinator shall make sure the owner provides credit when applicable, for salvage value, betterment, and all supporting documents are attached to the invoice.

UTILITY RECORDS KEEPING:

Utility Coordinator will create a Utility File for each impacted facility. These records will be retained by the local agency as required by FHWA regulations.

Section 23 CFR 645.119 (c)(1)(iv), Alternate Procedure approval, requires documentation of actions taken in compliance with state and federal policies. All engineering decisions affecting the utility relocation from the beginning of planning to the completion of relocation and billing, should be documented in the local agency’s Utility File diary.

It is essential that documented field verification of the progress and completion of all reimbursable utility work be provided by the local agency. This required documentation is met by the use of detailed inspector’s diaries or their equivalent.

If the local agency wishes not to request federal participation for the utility relocation work on projects off the SHS, even though they will be requesting federal participation in other right of way activities and/or the construction phases of the project, the local agency may use its own utility relocation policy and procedure as long as they comply with FHWA’s regulations and requirements under 23 CFR Part 645 and other related federal regulations. However, the local agency must provide the proposed utility relocation plan to the DLAE for forwarding to the Caltrans District Utility Coordinator for review so that proper right of way certification on utility relocation matters may be given prior to construction.

14.2 FEDERAL REIMBURSEMENT

Federal regulations governing utility relocation are described extensively in 23 CFR Part 645. Local agencies should be familiar with these regulations. The following procedures are based on the above-mentioned and other federal regulations. **When the local agency requests federal participation in utility relocations, these regulations must be followed.**

Under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy Users (SAFETEA-LU) and the FHWA Alternate Procedure process 23 CFR 645.119, and E-76, utility relocation work has been delegated to Caltrans on “Delegated” projects for full review oversight requirements by FHWA (see Chapter 2, “Roles and Responsibilities,” of the LAPM), and Caltrans also has approval authority for “Specific Authorization” and “Approval of the Utility Agreement.”

The Utility Coordinator will send all submissions to the Caltrans District Utility Coordinator for review and approval.

The following items must be included in the request:

1. Copy of Notice to Owner
2. Fully executed Utility Agreement
3. Approved owner’s conflict resolution plan showing the necessary relocations
4. The completed Report of Investigation and any supporting documents
5. An itemized estimate of the local agency’s relocation costs

Such review typically takes three (3) weeks. Submission must be submitted in advance of the proposed ROW Certification date. The DLAE is not responsible for delays due to an incomplete or erroneous relocation package.

ANTICIPATED UTILITY RELOCATIONS

To apply and qualify for federal reimbursement, these steps must be followed:

AUTHORIZATION TO PROCEED (E-76)

Prior to the start of any physical utility relocation work, the local agency must complete the “Request for Authorization to Proceed with Utility Relocation” form (see Exhibit 3-C, Chapter 3 and Exhibit 3-E “Request for Authorization Data Sheet,” of the LAPM,) where all anticipated utility facilities requiring relocation will be listed with an estimated cost to relocate each facility.

On page 2 of the above referenced Exhibit 3-C, under Utility Relocation, the “Alternate Procedure” box must be checked. The completed E-76 must request the use of the Alternate Procedure 23 CFR 645.119 (e) (2)) and must include a list of every utility facility anticipated to be relocated along with the utility company’s name and best available estimate of the total local agency costs involved for each facility.

The E-76 request must be submitted to the DLAE, who will forward the request to the Caltrans District Utility Coordinator for review and comment. The E-76 request form will then be processed by the DLAE.

SPECIFIC AUTHORIZATION TO RELOCATE UTILITIES

In addition to the “Request for Authorization to Proceed” and prior to commencement of any physical relocation, the local agency must also request and receive a “Specific Authorization to Relocate Utilities” (Form RW 13-15-or Exhibit 14-C of this chapter) for each utility relocation. Either the utility owner or the construction contractor may perform all or portions of the utility facility relocation for which Specific Authorization approval is requested.

NOTE: RW Form 13-15 (Exhibit 14-C) is a dual form, containing both the “FHWA Specific Authorization to Relocate Utilities” and “FHWA Approval of Utility Agreement.”

i) Work by Utility Owner or Owner’s Contractor

If the relocations are to be performed by the utility owner and federal participation is requested, the Field Review Form (see Chapter 7, “Field Review,” of the LAPM) should include the item with sufficient detail to allow programming of the work in the right of way phase for approval by FHWA under a Utility Agreement.

NOTE: Prevailing Wages are required for any works performed by Owner’s contractor (Labor Code Section 1720)

ii) Work by Local Agency’s Highway Contractor

If the relocations are to be performed during the construction phase by the local agency’s highway contractor, the work should be included in the plans and specifications like any other work. The local agency must add an explanation to this effect to the “Remarks” section of the Specific Authorization Request to Relocate Utilities (Exhibit 14-C) and must attach a copy of the approved Specific Authorization to the Right of Way Certification submittal. Utility relocation costs may be included in the highway contract as a bid item, as supplemental work, or as a contract change order, and financed from funds in the construction work authorization.

In the event a major change in scope of work and/or relocation cost is found to be necessary, a revised Specific Authorization to Relocate Utilities must be immediately submitted for authorization prior to the new work being commenced.

Any minor change that does not include changes in scope of the work, addition or deletion of the proposed conflict resolution plan, may be submitted in a letter to Caltrans describing the change including revised maps and estimate, and requesting that the change be included under the original authorization.

APPROVAL OF UTILITY AGREEMENT

The local agency must submit each executed Utility Agreement and a request for FHWA approval of the Utility Agreement to the DLAE for processing. This approval authority has been delegated to Caltrans Division of Right of Way and Land Surveys by FHWA. Such review and approval typically takes three (3) weeks if the local agency used the pre-approved utility clause (“Utility Agreement Clauses,” Exhibit 14-G, of this chapter).

Upon approval, Caltrans will provide the local agency with the FHWA Approval of Utility Agreement form (Exhibit 14-C) for each Utility Agreement. Any exceptions to the approval will be noted in writing on the “Remarks” section of the form, and the local agency will be requested to concur with the exceptions or to prepare a rebuttal. It is anticipated that agreement will be reached on all such items prior any physical work commencement to avoid the loss of eligibility.

It is strongly recommended that the standard Utility Agreement Clauses found in Exhibit 14-G be used in every circumstance. Use of nonstandard clauses requires Caltrans Headquarters Legal review and recommendation before the Utility Agreement can be executed. When applicable, the following items should be shown in the itemized estimate(s) of the relocation costs.

i) Credits

- FHWA Regulations (23 CFR 645.117 (h)) require salvage credit to any highway or freeway project for the value of facilities removed as part of the relocation for future use or resale.
- FHWA Regulations (23 CFR 645.117 (h)) also require betterment credit for the cost of any betterment to the facility being replaced or adjusted.

NOTE: When it is an “On-System” project.

State law (Section 705 of the California Streets and Highways Code) requires that utility owners itemize estimate, and invoice for utility relocation to show a credit for the used life of an existing utility facility being replaced in connection with improvement to a freeway. Where these credits are received by the local agency, they must be properly listed on the invoice and deducted from the total federal-aid reimbursement amount.

ii) Removal Only

Where the entire utility transaction consists of removal without replacement, consideration should be given to handling it as a right of way clearance item and invoicing for federal reimbursement in that fashion. If processed as a right of way clearance activity, the following conditions apply:

- The utility owner must have a property right in the existing location, which is compensable in eminent domain.
- The local agency must enter into an agreement with the owner providing for the removal of the facility. In support of the invoice for federal reimbursement, the file must contain information to show that the cost of removal by the utility owner was more cost-effective than the local agency buying the facilities and having them removed by some other method.

Where legitimate “removal without replacement” charges are included in a utility owner’s invoice and the local agency has not arranged to receive a credit for salvage (see above), the charges may be invoiced for federal reimbursement only when they are reduced by the amount of salvage attributable to the subject facilities, as shown by the utility owner’s records available for audit as noted in the Utility Agreement (48 CFR 31).

iii) Using Right of Way Clearance Contract

Where utility relocation work is performed by the local agency under a right of way clearance contract, a conformed copy of the executed contract must be forwarded to the DLAE before submitting an invoice for federal reimbursement.

iv) Using Consultants

When a local agency or utility owner employs a consulting engineer to perform engineering services in connection with a specific utility relocation and federal participation is involved, the procedures in Chapter 10, “Consultant Selection,” of

the LAPM shall apply. The consultant agreement must satisfy the criteria specified in Chapter 13, Section 14 of the Caltrans *ROW Manual* including a completed pre-award evaluation, if applicable. These steps must be performed by the local agency early in the process to avoid loss of eligibility.

NONREIMBURSABLE

FHWA regulations prohibit federal reimbursement for costs of interest during construction or interest on funds borrowed by the owner for performing the relocation.

UNANTICIPATED UTILITY RELOCATION

After the normal period to apply for Specific Authorization to Relocate Utilities has expired and an unanticipated utility relocation is encountered, the Utility Coordinator must immediately notify the DLAE and request a Special Authorization to Relocate Utilities.

The Special Authorization to Relocate Utilities is reserved for those cases where required work could not be identified in time to secure normal authorization, or when the contractor's operations will be delayed. The local agency must provide a statement with full explanation of the special circumstances for the request. Requests for Special Authorization to Relocate Utilities must be based on substantial reasons.

Special Authorization to Relocate Utilities must be upgraded by the local agency to full Specific Authorization status before the local agency submits an invoice for reimbursement.

SPECIAL AUTHORIZATIONS

There are two types of Special Authorization to Relocate Utilities: 1) written, and 2) verbal. Both verbal and written Special Authorization to Relocate Utilities is "preliminary authorization." The request will be reviewed and approved on case-by-case basis. No utility work may begin before Special Authorization to Relocate Utilities is obtained, or risk the eligibility for reimbursement.

The submittal for either written or verbal Special Authorization to Relocate Utilities request must contain:

- Reason for special "preliminary authorization."
- Name of the owner, type of facility, as they are listed in the E-76.
- Best available liability determination, including documentation such as an ROI.
- Best available itemized cost and estimate.
- Breakdown of time, material, and equipment costs.
- Relocation plan showing the right of way, access control, existing and proposed utility facility.
- The name of the entity who will perform the work (if the utility owner's contractor, explain how the contractor was selected).

WRITTEN AUTHORIZATION

If a written Special Authorization to Relocate Utilities is obtained, a complete request package ("Submittal Requirements for Federal Participation in Utility Relocations," Exhibit 14-A in this chapter) must be submitted to the DLAE within 30 days. The DLAE will forward the request package to the Caltrans District Utility Coordinator for review and approval.

The approval should contain a statement that the Caltrans District Utility Coordinator has reviewed the relocation plans and is familiar with the circumstances requiring Special Authorization to Relocate Utilities.

VERBAL AUTHORIZATION

Verbal Special Authorization to Proceed may be requested, if during construction a previously unknown utility conflict is discovered that will delay the contractor. Verbal Special Authorization to Proceed may be obtained from the Caltrans District Utility Coordinator (via the DLAE) by telephone or fax. The Caltrans District Utility Coordinator will confirm each verbal authorization via letter to the local agency's Project Engineer. Such confirmation letters shall be issued within five (5) working days or sooner, depending on the complexity of the relocation and the circumstances, which necessitate it. A copy of each confirmation letter will be sent to the DLAE.

If Verbal Special Authorization to Proceed is obtained, the local agency must furnish a written submittal to the DLAE confirming the information and containing a fully documented relocation plan. This must be accomplished within 30 days. An appropriate diary of decisions and discussions shall be maintained.

14.3 HIGH AND LOW RISK UNDERGROUND FACILITIES

Caltrans' Policy on High and Low Risk Underground Facilities Within Highway Rights of Way requires all high risk utility facilities located within project limits are positively identified and to be shown on project plan.

For Federally Participating "Off-System" projects, compliance with the state's policy on High and Low Risk Underground Facilities is not mandatory. It is, however, highly recommended that this policy be followed to insure the maximum safety during construction of the project.

NOTE: When it is an "On-System" project.

All local agency projects on the SHS shall conform to the state's "Policy on High and Low Risk Underground Facilities within Highway Rights of Way." See *Caltrans Project Development Procedures Manual* (PDPM), Appendix LL, Utilities. A copy of the policy may be obtained from Caltrans Division of Design. It is also available online at: http://www.dot.ca.gov/hq/oppd/pdpm/apdx.htm/apdx_II/apdx_II.htm

When performing Right of Way Utility Relocation on a "On-System" project, local agency's Project Engineer must complete the "Project Engineer's Certification of Utility Facilities" and submit it as an attachment to the project certification, as required by the policy.

14.4 AUDIT REQUIREMENTS

Utility Coordinator is responsible to submit request for any applicable audits as described in Section 5.8 of Chapter 5 of the LAPM.

NOTE: When it is an “On-System” project.

The following are requirements for Pre-Award Evaluation and Post Award Audit. The Utility Coordinator is responsible to submit requests for audit when applicable:

PRE-AWARD EVALUATION:

Caltrans pre-award evaluation is required for Utility Agreements, contracts and subcontracts involving federal funds. The local agency shall make a written request through the DLAE, for a pre-award evaluation to Caltrans Audits on Utility Agreements which equal or exceed \$1 million, for lump sum Utility Agreements over \$100,000, or where a consultant will perform preliminary engineering equal or exceeding \$1 million. These requirements are subject to change. Please contact the Caltrans District Utility Coordinator for information on current authorization limits and details.

POST AWARD AUDIT:

The State is responsible to conduct final post audits of actual and necessary costs incurred by utility owners pursuant to a Utility Agreement or contract on federal-aid projects. This also applies to subcontractors under the prime agreement.

14.5 REFERENCES

- *23 Code of Federal Regulations (CFR) 645*
- *48 Code of Federal Regulations (CFR), Chapter 1, Part 31*
- *California Streets and Highways Code, Sections 702, 703, 705, and 706*
- *Caltrans Encroachment Permits Manual*
- *Caltrans Project Development Procedures Manual, Appendix LL, Utilities*
- *Caltrans Right of Way Manual (ROW Manual)*
- *Code of Civil Procedure, Section 1268.350*
- *Government Code, Section 53630*
- *Intermodal Surface Transportation Efficiency Act (ISTEA)*
- *Water Code Sections 7034 and 7035*
- SAFETEA-LU Web site at: <http://www.fhwa.dot.gov/safetealu/factsheets.htm>.

**Exhibit 14-A Local Agency Submittal Requirements
for Federal Participation in Utility Relocations****LOCAL AGENCY SUBMITTAL REQUIREMENTS FOR FEDERAL PARTICIPATION IN
UTILITY RELOCATIONS**

To obtain federal participation for a specific utility relocation, a request for "Specific Authorization" must be submitted to Caltrans. The request must contain the following:

1. ☐ A color coded plan prepared on highway layout sheets, clearly, and accurately showing the following:
 - ☐ Existing and proposed right of way lines
 - ☐ Existing and proposed access control lines (if applicable)
 - ☐ Existing and proposed highway centerline
 - ☐ For the existing and for the proposed utility facility, show their:
 - ☐ Location
 - ☐ Type
 - ☐ Size
 - ☐ Length
 - ☐ Clearly plot and label the type of property rights the owner is claiming as a prior right (if applicable)
 - ☐ Clearly plot and label the type of proposed property rights to be supplied by the state (if applicable)
 - ☐ Show geometric features if the relocation is related to them
 - ☐ Provide a color coded legend and title block on the plan
2. ☐ One copy of a detailed itemized estimate of cost showing, as a minimum the following:
 - ☐ Estimated cost of labor
 - ☐ Estimated cost of materials (list the major items of materials)
 - ☐ Estimated cost of transportation and equipment
 - ☐ Estimated cost of overhead (include a list of major components)
 - ☐ Estimated cost of any new right of way required

- ☐ Estimated credit for salvage and depreciation
- ☐ Estimated credit for betterment

The estimate submitted with the request for Specific Authorization must contain an entry for each of the items listed above. If a particular item is not applicable, a zero amount shall be shown.

Unit costs such as broad gauge units of property may be used for estimate purposes where the utility owner uses such units in its own operation. These costs normally include overhead, labor, transportation, equipment, and materials. Right of way costs and estimated credits must be given separately. If this type of estimate is used, it must be identified as a "broad gauge" estimate.

If it is not possible to obtain an adequate estimate from the owner, the local agency may prepare an estimate based on the owner's plan using current cost data from similar utility relocation work. Justification for use of an estimate prepared by the local agency must be submitted with the request.

If the estimate is to be used for a lump sum Utility Agreement, federal regulations require that it must be accurate, comprehensive, verifiable, and in sufficient detail to give a clear picture of the work involved and the cost of the individual items. The estimate should be broken down by:

- ☐ Direct labor by class, rate, and time
- ☐ Labor surcharges
- ☐ Overhead and indirect construction charges
- ☐ Materials and supplies, by item, quantity, and price
- ☐ Handling charges
- ☐ Transportation
- ☐ Equipment by size, type, rate, and time
- ☐ Preliminary engineering
- ☐ Construction engineering
- ☐ Salvage and depreciation credits
- ☐ Betterment credit
- ☐ Other items as required by 23 CFR 645

Utility owners should be advised that lump sum agreements cannot be entered into on federal-aid projects, unless the owners are prepared to supply the required detailed itemized estimate in the planning stage. Please contact the Caltrans District Utility Coordinator (via the District Local Assistance Engineer [DLAE]) for information on additional requirements and/or restrictions.

3. ☐ Copies of the proposed Utility Agreement and Notice to Owner

4. ☐ Documentation supporting owner's claim of prior rights
5. ☐ A letter of transmittal in triplicate requesting Specific Authorization containing:

The file data including county, route, notice number, Utility Agreement number (if different), federal project number, and name of the utility owner. If both right of way and construction funds are involved, the right of way and construction federal project numbers must be shown (the Utility Agreement must also contain both numbers). If all of the work is to be performed by the highway contractor, only the construction federal project number need be shown.

Location of the work by geographical limits.

General description of what is to be done including a list of the major facilities involved.

A statement describing who will perform the work. In order to comply with federal requirements, the transmittal must contain one or more of the following statements as applicable:

THE WORK WILL BE PERFORMED BY:

- **The utility owner's forces:** The local agency has determined this is cost-effective and has verified the owner is qualified to perform the work in a satisfactory manner with its own personnel and equipment.
- **The utility owner's continuing contractor:** The local agency has determined this is cost-effective and verified the contract between the owner and the contractor is in writing and that similar work is regularly performed for the owner under the contract at reasonable costs.
- **Competitive bid contract:** The owner is not adequately staffed or equipped to perform the work with its own forces. The local agency will verify that the utility owner will award the contract for the work to the lowest, qualified, responsible bidder based on an appropriate solicitation.
- **The Local Agency's highway contractor:** The utility work is to be included in the local agency's highway construction contract. The local agency has determined this is the most cost-effective method.

The local agency is responsible for making the determination and documenting within a statement, the following:

- ☐ The dates between which it is anticipated the work will be performed.
- ☐ A determination as to whether the local agency's payment standards or 23 CFR 645 payment standards are more restrictive and the reasons supporting said determination.
- ☐ An explanation of any significant difference between the existing facility and the proposed rearrangement as shown on the plans and the itemized estimate of cost. For example, if an increase in size or capacity is shown on the plans and betterment credits are not reflected in the itemized estimate, an explanation and justification must be included.
- ☐ If prior rights of the owner are involved and a Joint Use Agreement or Consent to Common Use Agreement is required, include the following statement: "Joint Use Agreement(s) or Consent to Common Use Agreement(s) will be executed by both parties, and an original copy will be retained by the local agency."

- ☐ If the utility will occupy any portion of the new highway right of way and does not have prior rights in the old location, include a statement that the relocation plan does not contain encroachments contrary to the policy of the authority having jurisdiction over the right of way and that the appropriate standard encroachment permit will be issued.

For local agency use, please refer to the Caltrans-approved "Report of Investigation," Form RW 13-3 in the Caltrans *ROW Manual*.

Distribution: 1) Local agency submits to DLAE

Exhibit 14-B Local Agency Utility Agreement Provisions for Federal Participation**LOCAL AGENCY UTILITY AGREEMENT PROVISIONS
FOR FEDERAL PARTICIPATION**

The following provisions apply to Utility Agreements on federally participating utility relocations:

1. The federal project number identification (right of way or construction, whichever is appropriate) must be stamped or typed on each copy of the Utility Agreement.
2. The Utility Agreement must contain the following:

- ☐ The basis for liability
- ☐ A description of the work
- ☐ The location of the work
- ☐ A schedule for accomplishing the work
- ☐ The method of performing the work
- ☐ Provision for an acceptable method of developing relocation costs
- ☐ The Utility Agreement must incorporate 23 CFR 645 by reference using one of the following:

“It is understood that said highway is a federal-aid highway and accordingly, 23 CFR 645 is hereby incorporated into this Agreement.”

Where the owner protests the inclusion of 23 CFR 645:

“It is understood that said highway is a federal-aid highway and accordingly, 23 CFR 645 is hereby incorporated into this Agreement with the understanding that provisions governing reimbursement procedures are applicable to the relationship between the local agency, the state, and the United States.”

“Incorporation of 23 CFR 645 is not required in agreements with federal agencies.”

Refer to Exhibit 14-G, “Utility Agreement Clauses,” of this chapter for more utility clauses. Chapter 13, “Utility Relocation,” Section 13.07.00.00 of the Caltrans *ROW Manual* may be used as a guide for the preparation of Utility Agreements.

3. Where the actual cost of the utility relocation exceeds by 25% the estimated cost included in the Utility Agreement, an amendment to the Utility Agreement must be prepared and executed.
4. The local agency must promptly submit a conformed copy of the fully executed Utility Agreement along with the “Request for FHWA Approval of Utility Agreement” (Exhibit 14-C in this chapter) to the DLAE for processing by the Caltrans District Utility Coordinator. No utility owner or consultant invoices will be processed until the Utility Agreement has been granted written FHWA Approval of Utility Agreement by Caltrans.

The following must be included with the transmittal:

- ☐ Two copies of the transmittal memorandum.
- ☐ One copy of the local agency's detailed itemized estimate of relocation cost. This is not needed if a satisfactory estimate was included with the local agency's request for Specific Authorization (Exhibit 14-C in this chapter) and there is no significant change.
- ☐ One set of "as built" plans, if complete, or a statement that there is no significant change anticipated from the relocation plan previously submitted in the Specific Authorization request package.

Exhibit 14-C FHWA Specific Authorization/Approval of Utility Agreement

Memorandum

To: **DEPARTMENT OF TRANSPORTATION**
LOCAL ASSISTANCE

Date : _____

File No.: _____

Attention: _____
District DLAEFrom: _____
(LOCAL AGENCY)Subject: ☐ FHWA SPECIFIC AUTHORIZATION TO RELOCATE UTILITIES
☐ FHWA APPROVAL OF UTILITY AGREEMENT

OWNER'S NAME:

PROJECT DESCRIPTION:

NOTICE NUMBER:

UA NUMBER:

E-76 ALT PROC APPROVED: STATUS CERT DATE:

RELOCATION COST ESTIMATE: \$ EA:

DESCRIPTION OF RELOCATION WORK:

REMARKS:

☐ THE UTILITY RELOCATION WORK AUTHORIZED COMPLIES WITH THE PROCEDURES IN 23 CFR 645.☐ THE UTILITY AGREEMENT APPROVED COMPLIES WITH THE PROCEDURES IN 23 CFR 645.

EFFECTIVE DATE: _____

BY: _____
District Utility Coordinator**Distribution:** 1) Utility Coordinator – File, 2) DLAE – File, 3) District Utility Coordinator – File,
4) Office Chief – Federal Programs Accounting (MS-33), 5) Office Chief – Budget Federal Resources (MS- 24)
6) Office Chief – HQ RW Utilities (MS-37)

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Exhibit 14-D Notice to Owner

NOTICE TO OWNER

(Name of LOCAL AGENCY)

Page 1 of 1

NOTICE TO OWNER

No. _____

| | | | |
|-------------------------|--------------------------|---|------------------|
| COUNTY | ROUTE/ STREET | POST MILE | PROJECT # |
| (Name of the County) | | | |
| Federal Aid No. | | | |
| Owner's Plan No. | | | |
| Date: | | "On-System" Yes <input type="checkbox"/> No <input type="checkbox"/> | |

To: (Name of the Owner)
(Owner address)

Because of the (Name of Local Agency's) transportation project to (project description), in (Name of the City and County),

which affects your facilities: (impacted facility) as shown on Map (number).

You are hereby ordered to: _____.

Your work schedule shall be: from _____, 200X to _____, 200X.

Notify (Name Project Engineer), telephone (999) 123-4567, _____ hours prior to initial start of work, and an additional _____ hours notification for subsequent starts when the work schedule is interrupted.

Liability is _____ % Owner (or Agency) pursuant to _____.

Owner Rep: _____
Public Works Coordinator
(Rep's address if differ from the above)

cc: Resident Engineer
Permit

By _____
(Name)
Local Agency Director

THIS NOTICE DOES NOT CONSTITUTE A PERMIT. OBTAIN AN ENCROACHMENT PERMIT BEFORE STARTING WORK.

Distribution: 1) Owner, 2) Utility Coordinator – File, 3) RE – File
4) DLAE – File, 5) District Utility Coordinator - File

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Exhibit 14-E Report of Investigation

REPORT OF INVESTIGATION

(Name of LOCAL AGENCY)

REPORT OF INVESTIGATION

| COUNTY | ROUTE | POST MILE | PROJECT # |
|--------|-------|-----------|-----------|
| | | | |

| | |
|---------------------------|--|
| Fed. Aid No. | |
| Notice to Owner No. | |
| Utility Owner | |
| Impacted Utility Facility | |

This Report of Investigation is submitted for review and approval. The following support documents are attached:

Approval of FHWA Specific Authorization is ☐ is not ☐ requested.

- ☐ A copy of the Utility Relocation Plan as described in Sections 13.05.03.00 and 13.05.03.01 of the ROW Manual.
- ☐ A copy of the owner's liability claim letter.
- ☐ A copy of the owner's estimate of cost.
- ☐ A copy of the proposed Utility Agreement.
- ☐ A copy of the proposed Notice To Owner.
- ☐ A copy of the owner's prior rights claim supporting documentation.

1. PROJECT LOCATION AND DESCRIPTION:

2. LIABILITY DATA:

- A. PROJECT IS AN:
- | | |
|--------------|--------------------------|
| “On-System” | <input type="checkbox"/> |
| “Off-System” | <input type="checkbox"/> |
| Other | <input type="checkbox"/> |

- ### B. DATES:

Route adoption: Dd/mm/yyyy (if applicable)

Freeway resolution: Dd/mm/yyyy (if applicable)

Appraisal map: Dd/mm/yyyy (if applicable)

Installation of Existing Facilities: Dd/mm/yyyy

C. UTILITY OWNER IS:

Public ☐
Private ☐

D. EXISTING UTILITY FACILITY IS LOCATED:

| | Yes | No |
|--|--------------------------|--------------------------|
| 1) In existing State Highway right of way? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2) On other public way, i.e., city street? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3) On private property? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4) Intersecting installation? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5) Longitudinal installation? | <input type="checkbox"/> | <input type="checkbox"/> |

E. UTILITY OWNER'S AUTHORITY FOR INSTALLATION:

| | |
|--|--------------------------|
| 1) Fee-owned land | <input type="checkbox"/> |
| 2) Recorded easement | <input type="checkbox"/> |
| 3) Unrecorded easement | <input type="checkbox"/> |
| 4) Prescriptive right | <input type="checkbox"/> |
| 5) Joint Use Agreement (JUA) or Consent to Common Use Agreement (CCUA) | <input type="checkbox"/> |
| 6) Franchise | <input type="checkbox"/> |
| 7) State permit | <input type="checkbox"/> |
| 8) County permit | <input type="checkbox"/> |
| 9) City permit | <input type="checkbox"/> |
| 10) Joint Pole Agreement* | <input type="checkbox"/> |
| 11) Other (describe below) | <input type="checkbox"/> |

F. Yes No

- ☐ ☐ Is the owner's authority for installation based on a deed (item E.1), 2), 3) or 5) above)? If **YES**, the preparer of this Report of Investigation asserts that to the best of her/his ability:
- ☐ ☐ The deed has been read.
- ☐ ☐ The description has been accurately plotted and is clearly shown on the attached plan.
- ☐ ☐ The title has been investigated and that:
- ☐ ☐ The grantor was the owner as of the date on the deed.
- ☐ ☐ The owner's facilities are located within the area described in the deed.
- ☐ ☐ The public agency has prior rights to the area described in the deed or recorded map to which the state will be the successor in interest. If **YES**, show the date the public acquired their rights and explain the nature of those rights here or in the narrative.

Yes No

- G. ☐ ☐ Are there contractual obligations contained in the documents checked in item E. above that require the owner to relocate, or are there special conditions in the owner's authority for installation?

If **YES**, explain here in narrative:

- H. LIABILITY RECOMMENDATION IS BASED ON (check all that apply):

- ☐ Section _____ of the Streets and Highway Code
- ☐ Section _____ of the Master Contract, dated _____
- ☐ Water Code Section 7034
- ☐ Water Code Section 7035
- ☐ Prior and superior rights of the Utility Owner
- ☐ Other, explain:

- I. LIABILITY APPORTIONMENT:

Agency _____ % Utility Owner _____ %

Explain
apportionment:

3. RELOCATION PLAN DETAILS:

- A. IT IS ANTICIPATED THE UTILITY WORK WILL BE COMPLETED BY:

Prior/concurrent/after
construction _____ (dd/mm/yyyy).

- B. ENCROACHMENTS:

- ☐ There will be no encroachments within the project area.
- ☐ There are encroachments **and**:

Yes No

☐ ☐ All new or existing encroachments comply with current agency's Policy.
If "NO," a copy of the letter approving the exception to the encroachment policy is attached.

☐ ☐ The Caltrans standard Encroachment Permit will be or has been issued. If "NO," explain in narrative.

C. LUMP SUM:

Yes No

☐ ☐ The lump sum payment method will be used.
If "YES," a detailed and itemized estimate is attached.

D. THIS RELOCATION WILL BE FUNDED WITH:

Yes No

☐ ☐ Agency funds only.

☐ ☐ Federal participation in the funding.

4. THE WORK WILL BE PERFORMED BY: (check those which apply)

☐ **The utility owner's forces:** The district has determined this is cost-effective and has verified the owner is qualified to perform the work in a satisfactory manner with its own personnel and equipment.

☐ **The utility owner's continuing contractor:** The district has determined this is cost-effective and verified the contract between the owner and the contractor is in writing and that similar work is regularly performed for the owner under the contract at reasonable costs.

☐ **Competitive bid contract:** The owner is not adequately staffed or equipped to perform the work with its own forces. The district will verify that the utility owner will award the contract for the work to the lowest qualified responsible bidder based on an appropriate solicitation

☐ **State's highway contractor:** The utility work is to be included in state's highway construction contract. The district has determined this is the most cost-effective method.

5. REVIEW OF ESTIMATE:

Depreciation: \$ _____ ☐ None*
Salvage: \$ _____ ☐ None* * If none, state why below.

6. BETTERMENT:

☐ There is no betterment.

☐ Betterment in the amount of \$ _____ has been identified for:

7. CERTIFICATION:

Yes No

☐☐

The project engineer has certified that the relocation plan will clear the project.

☐☐

The Utility Coordinator has reviewed the proposed relocation and has determined it is a cost-effective plan to functionally restore the utility owner's operating facilities that existed prior to the state's highway project.

8. ATTACH A NARRATIVE DISCUSSION OF THE PROPOSED UTILITY WORK TO THIS REPORT WHICH INCLUDES:

- A. Description of existing utility facility and its location.
- B. Discussion of owner's authority for installation of the existing utility facility.
- C. Description and justification of proposed relocation plan.
- D. Property rights needed.
- E. Any non-standard aspects of the relocation, documents, etc.

9. THE ESTIMATED COST TO THE PROJECT IS AS FOLLOWS:

Consisting of Design funds: \$ _____

Consisting of Construction funds: \$ _____

Consisting of Right of Way funds: \$ _____

Total: \$ _____

Prepared By:

Utility Coordinator

Date: _____

Approval

Recommended By:

Agency Director

Date: _____

Distribution: 1) Utility Coordinator, 2) DLAE – File, 3) District Utility Coordinator - File

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Exhibit 14-F Utility Agreements

UTILITY AGREEMENTS

(Name of LOCAL AGENCY)

UTILITY AGREEMENT

| | | | |
|---|--------------|-------------|------------------|
| County | Route | P.M. | Project # |
| | | | |
| Fed. Aid. No. | | | |
| Owner's File | | | |
| FEDERAL PARTICIPATION: On the Project : Yes/No | | | |
| On the Utilities: Yes/No | | | |

UTILITY AGREEMENT NO. XXXX.xx

The (*Name of local agency*) hereinafter called "LOCAL AGENCY" proposes to (*project description*) _____ on _____ Street, in _____ City/Town, _____ County, California.

And: *Owner's name*

hereinafter called "OWNER," owns and maintains (*impacted facility*) facilities; within the limits of LOCAL AGENCY's project that requires relocation of said facilities to accommodate LOCAL AGENCY's project.

It is hereby mutually agreed that:

- I. WORK TO BE DONE:
(Use appropriate clause(s) in EXHIBIT 14-G, Section I)
- II. LIABILITY FOR WORK
(Use appropriate clause(s) in EXHIBIT 14-G, Section II)
- III. PERFORMANCE OF WORK
(Use appropriate clause(s) in EXHIBIT 14-G, Section III)
Use Clause III-6, Prevailing Wages, when applicable.
- IV. PAYMENT FOR WORK
(Use appropriate clause(s) in EXHIBIT 14-G, Section IV)

V. GENERAL CONDITIONS

(Use appropriate clause(s) in EXHIBIT 14-G, Section V)

IN WITNESS WHEREOF, the above parties have executed this Agreement the day and year above written.

LOCAL AGENCY

(OWNER)

By: _____

(Name)

Local Agency Director

By: _____

(Name)

(Title)

Date: _____

Date: _____

Distribution: 1) Owner, 2) Utility Coordinator, 3) DLAE –File, 4) District Utility Coordinator – File

EXHIBIT 14-G UTILITY AGREEMENT CLAUSES**UTILITY AGREEMENT CLAUSES**

Use of these clauses will reduce errors and omissions as well as save preparation, review, and approval time as the clauses have been pre-reviewed and approved by Caltrans, as well as most major Utility Owners. The clauses are numbered for each section of the Utility Agreement. The Local Agency preparing the Utility Agreement will need to select the appropriate clause(s) for each section. Some of the clauses pertain to involvement with State Highway Right of Way; a careful analysis should be made to determine which clauses would be appropriate.

Section I. Work to be Done:**I-1. Work Performed by Owner per Owner's Plan:**

"In accordance with Notice to Owner No. _____ dated _____, OWNER shall _____. All work shall be performed substantially in accordance with OWNER's Plan No. _____ dated _____ consisting of _____ sheets, a copy of which is on file in the Office of the LOCAL AGENCY at _____. Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner."

NOTE: Significant changes in previously approved plans and itemized estimates require a revised FHWA Specific Authorization.

I-2. Work Performed by Local Agency's Contractor per Local Agency's Plans:

"In accordance with Notice to Owner No. _____ dated _____, LOCAL AGENCY shall relocate OWNER's _____ as shown on LOCAL AGENCY's contract plans for the improvement of _____, which by this reference are made a part hereof. OWNER hereby acknowledges review of LOCAL AGENCY's plans for work and agrees to the construction in the manner proposed.

Deviations from the plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and acknowledged by the OWNER, will constitute an approved revision of the plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner. OWNER shall have the right to inspect the work during construction. Upon completion of the work by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facilities."

NOTE: Whenever liability is determined pursuant to Water Code Sections 7034 or 7035, Standard Clauses I-2, 3 or 4, may be modified by the deletion of the sentence: "Upon completion of the work by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facility." (Also Clause V-10 will need to be added to the Utility Agreement.)

I-3. Work Performed by Local Agency's Contractor per Owner's Plan:

"In accordance with Notice to Owner No. _____ dated _____, LOCAL AGENCY shall relocate OWNER's _____ as shown on OWNER's Plan No. _____ dated _____, which plans are included in LOCAL AGENCY's Contract Plans for the improvement of _____ which, by this reference are made a part hereof.

Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and acknowledged by the OWNER, will constitute an approved revision of the OWNER's Plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner. OWNER shall have the right to inspect the work by LOCAL AGENCY's contractor during construction. Upon completion of the work by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facilities."

NOTE: See NOTE under Clause I-2.

I-4. Work Performed by Both Owner and Local Agency's Contractor per Owner's Plan:

"In accordance with Notice to Owner No. _____ dated _____, OWNER shall _____ . All work shall be performed substantially in accordance with OWNER's Plan No. _____ dated _____ , consisting of _____ sheets, a copy of which is on file in the Office of the LOCAL AGENCY at _____."

"Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner."

"It is mutually agreed that the LOCAL AGENCY will include the work of _____ as part of the LOCAL AGENCY's highway construction contract. OWNER shall have access to all phases of the work to be performed by the LOCAL AGENCY for the purpose of inspection to ensure that the work being performed for the OWNER is in accordance with the specifications contained in the highway contract. Upon completion of the work performed by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facilities."

NOTE: See NOTE under Clause I-2.

Section II. Liability for Work:**II-1. Local Agency's Expense – California Streets and Highways Code (S&HC), Section 702 or 703:**

“The existing facilities are lawfully maintained in their present location and qualify for relocation at LOCAL AGENCY’s expense under the provisions of Section (702) or (703) of the Streets and Highways Code.”

II-2. Local Agency's Expense - S&HC 704:

“This is a second or subsequent relocation of existing facilities within a period of ten years; therefore, relocation is at LOCAL AGENCY’s expense under the provisions of Section 704 of the Streets and Highways Code.”

II-3. Local Agency's Expense - Superior Rights:

“Existing facilities are located in their present position pursuant to rights superior to those of the LOCAL AGENCY and will be relocated at LOCAL AGENCY’s expense.”

II-4. Local Agency's Expense - Service Line on Private Property:

“The facilities are services installed and maintained on private property required for highway purposes and will be relocated at LOCAL AGENCY’s expense.”

II-5. Local Agency's Expense - Prescriptive Rights:

“The existing facilities are located in their present position pursuant to prescriptive rights prior and superior to those of the LOCAL AGENCY and will be relocated at LOCAL AGENCY’s expense.”

II-6. Owner's Expense - Encroachment Permit:

“The existing facilities are located within the LOCAL AGENCY's right of way under permit and will be relocated at OWNER's expense under the provisions of Sections (673) and (680) of the Streets and Highways Code.”

II-7. Owner's Expense - Trespass:

“The existing facilities are located within the LOCAL AGENCY's right of way in trespass and will be relocated at OWNER's expense.”

II-8. Local Agency or Prorated Expense – Right of Way Contract:

“The existing facilities described in Section I above will be relocated (at LOCAL AGENCY’s expense) (at _____% LOCAL AGENCY expense and _____% OWNER expense) as set forth in Right Of Way Contract No. _____ dated _____.”

II-9. Local Agency or Prorated Expense - Master Agreement:

“The existing facilities described in Section I above will be relocated (at LOCAL AGENCY’s expense) (at _____% LOCAL AGENCY’s expense and _____% OWNER’s expense) in accordance with (Section _____ of the Master Agreement dated _____) (Sections _____ of the Master Agreement dated _____ in accordance with the following proration: _____).”

NOTE: Where liability for portions of the utility facility to be relocated will be based on different sections of the Master Agreement, the equation used to develop the overall percentage of liability is to be included in the Agreement.

II-10. Prorated Expense - No Master Agreement:

“The existing facilities described in Section I above will be relocated at _____% LOCAL AGENCY’s expense and _____% OWNER’s expense in accordance with the following proration: _____.”

NOTE: Insert the equation used to develop the overall percentage of liability for the relocation following the word “proration.”

II-11 Liability in Dispute - Deposit is not a Waiver of Rights

“Ordered work described as _____ is in dispute under Section _____ of the Streets and Highways Code. In signing this AGREEMENT neither LOCAL AGENCY nor OWNER shall diminish their position nor waive any of their rights nor does either party accept liability for the disputed work. LOCAL AGENCY and OWNER reserve the right to have liability resolved by future negotiations or by an action in a court of competent jurisdiction.”

NOTE: The appropriate Payment for Work clause (IV-1, 2, 8 or 9) must also be modified by inclusion of “after final liability determination” and “immediately following 90 days.”

Section III. Performance of Work:

III-1. Owner's Forces or Continuing Contractor Performs Work:

“OWNER agrees to perform the herein-described work with its own forces or to cause the herein described work to be performed by the OWNER's contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools, and equipment required therefore; and to prosecute said work diligently to completion.”

III-2. Owner Performs Work by Competitive Bid Process:

“OWNER agrees to cause the herein described work to be performed by a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure, and to furnish or cause to be furnished all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion.”

III-3. Local Agency's Contractor Performs All or Portion of Work:

“OWNER shall have access to all phases of the relocation work to be performed by LOCAL AGENCY for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the Highway Contract; however, all questions regarding the work being performed will be directed to LOCAL AGENCY's Resident Engineer for their evaluation and final disposition.”

III-4. Owner to Hire Consulting Engineer:

“Engineering services for locating, making of surveys, preparation of plans, specifications, estimates, supervision, inspection, _____ (delete or add services as established by the Owner's Agreement with the consultant) are to be furnished by the consulting engineering firm of _____ on a fee basis previously approved by LOCAL AGENCY. Cost principles for determining the reasonableness and allowability of consultant costs shall be determined in accordance with 48 CFR, Chapter 1, Part 31.”

III-5. Owner and Local Agency's Contractor Performs Work:

“OWNER agrees to perform the herein described work, excepting that work being performed by the LOCAL AGENCY's highway contractor, with its own forces and to provide and furnish all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion.”

III-6. Prevailing Wages Requirements for Contracted Work:

“Pursuant to Public Works Case No. 2001-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above.”

Section IV. Payment for Work:**IV-1. Owner Operates Under PUC or FCC Rules:**

“The LOCAL AGENCY shall pay its share of the actual cost of the herein described work within 90 days after receipt of OWNER's itemized bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for OWNER by the California Public Utilities Commission (PUC) or Federal Communications Commission (FCC), whichever is applicable.”

“It is understood and agreed that the LOCAL AGENCY will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the LOCAL AGENCY for all accrued depreciation on the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER.”

NOTES:

(1) When a lump sum payment method is to be used, substitute Clause IV-8 or IV-9 as appropriate for Clause IV-1 or IV-2 and IV-3.

(2) See Clause IV-10 for work being done by Local Agency's contractor.

IV-2. Owner Does Not Operate Under PUC or FCC Rules:

"The LOCAL AGENCY shall pay its share of the actual cost of the herein described work within 90 days after receipt of OWNER's itemized bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual cost and expense. The OWNER shall maintain records of the actual costs incurred and charged or allocated to the project in accordance with recognized accounting principles."

"It is understood and agreed that the LOCAL AGENCY will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the LOCAL AGENCY for all accrued depreciation on the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER."

NOTES:

(1) Section 705 of the S&H Code states that publicly owned sewers on freeways do not need to give credits for accrued depreciation. In these cases the following words "... for all accrued depreciation on the replaced facilities and ..." shall be eliminated from the second paragraph above.

(2) See Clause IV-1 for work done being done by Local Agency's contractor.

IV-3. For All Owners - Progress/Final Bills:

"Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit progress bills for costs incurred not to exceed OWNER's recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by LOCAL AGENCY of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement."

"The OWNER shall submit a final bill to the LOCAL AGENCY within 180 days after the completion of the work described in Section I above. If the LOCAL AGENCY has not received a final bill within 180 days after notification of completion of OWNER's work described in Section I of this Agreement, and LOCAL AGENCY has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER's facilities; LOCAL AGENCY will provide written notification to OWNER of its intent to close its file within 30 days and OWNER hereby acknowledges, to the extent allowed by law that all remaining costs will be deemed to have been abandoned."

"The final billing shall be in the form of an itemized statement of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the LOCAL AGENCY shall not pay final bills, which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER. If the final bill exceeds the OWNER's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation."

"In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNERS final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement shall have the prior concurrence of LOCAL AGENCY."

“Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audit in accordance with Contract Cost Principals and Procedures as set forth in 48 CFR, Chapter 1, Part 31 by LOCAL AGENCY and/or Federal Auditors.”

NOTES:

(1) See NOTE under Clause IV-1.

(2) Audit standards of 48 CFR, Part 31 have been accepted as Caltrans standard for all projects.

(3) Under Clause IV-3, regarding the standard 180 days for Owner to submit a final bill, the Local Agency can negotiate a shorter time frame in which the Owner must submit their final bill.

IV-4. Advance of Funds - Local Agency Liability:

“OWNER, at the present time, does not have sufficient funds available to proceed with the relocation of OWNER's facilities provided for herein. It is estimated that the cost of the work provided for by this Agreement and, as hereinafter set forth, is the sum of \$_____. LOCAL AGENCY agrees to advance to OWNER the sum of \$_____ to apply to the cost of the work to be undertaken as provided hereinabove. Said sum of \$_____ will be deposited by the LOCAL AGENCY with OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's bill for the advance.”

“It is further agreed that upon receipt of the monies agreed upon to be advanced by LOCAL AGENCY herein, OWNER will deposit said monies in a separate interest-bearing account or trust fund in State or National Banks in California having the legal custody of said monies in accordance with and subject to the applicable provisions of Section 53630, et seq., of the Government Code, and all interest earned by said monies advanced by LOCAL AGENCY and deposited as provided for above shall be credited to LOCAL AGENCY.”

“In the event actual relocation costs as established herein are less than the sum of money advanced by LOCAL AGENCY to OWNER, OWNER hereby agrees to refund to LOCAL AGENCY the difference between said actual cost and the sum of money so advanced. In the event that the actual cost of relocation exceeds the amount of money advanced to OWNER, in accordance with the provisions of this Agreement, LOCAL AGENCY will reimburse OWNER said excess costs upon receipt of five (5) copies of an itemized bill as set forth herein.”

NOTE: Generally, advance of funds should not exceed 90% of the Agreement amount due to possible credits for depreciation, salvage, etc. No funds should be advanced to cover owner initiated betterments.

IV-5. Loan of Funds - Owner Liability:

“OWNER recognizes its legal obligation to relocate its facility at its own cost, but at the present time does not have sufficient funds available to proceed with the relocation of OWNER's facilities provided for herein. It is estimated that the cost of the work provided for by this Agreement, and as hereinafter set forth, is the sum of \$_____. LOCAL AGENCY agrees to advance to OWNER the sum of \$_____, in accordance with Section 706 of the Streets and Highways Code, to apply to the cost of the work to be undertaken as provided hereinabove. Said sum of \$_____ will be deposited by the LOCAL AGENCY with OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's bill for the advance. It is understood that OWNER shall pay interest upon receipt of said advance. The rate of interest shall be the rate of earnings of the California Surplus Money Investment Fund and computation shall be in accordance with Section 1268.350 of the Code of Civil Procedure.”

IV-6. Agreement for Identified Betterments:

"It is understood that the relocation as herein contemplated includes betterment to OWNER's facilities by reason of increased capacity in the estimated amount of \$_____ (which represents _____% of the estimate dated _____. Said _____% shall be applied to the actual cost of work done) and OWNER shall credit the LOCAL AGENCY for the actual cost of said betterment; all of the accrued depreciation and the salvage value of any materials or parts salvaged and retained by OWNER."

IV-7. Local Agency Performs Work - Owner Requested Betterments:

"The LOCAL AGENCY shall perform the work under Section I above at no expense to OWNER except as hereinafter provided."

"It is understood that the relocation as herein contemplated includes betterment to OWNER's facilities by reason of increased capacity in the estimated amount of \$_____, said amount to be deposited upon demand in the _____ Office of the LOCAL AGENCY prior to the time that the subject freeway/highway contract bid is opened by the LOCAL AGENCY. The final betterment payment shall be calculated based upon the actual quantities installed as determined by the LOCAL AGENCY's engineer and the current cost data as determined from the records of the OWNER. In addition, the OWNER shall credit the LOCAL AGENCY at the time of the final bill for all the accrued depreciation and the salvage value of any material or parts salvaged and retained by the OWNER."

IV-8. Lump Sum/Flat Sum Billing Agreements (Excluding SBC):

"Upon completion of the work, and within 90 days after receipt of OWNER's bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, LOCAL AGENCY will pay OWNER the lump sum amount of \$_____. The above lump sum amount has been agreed upon between the LOCAL AGENCY and the OWNER and includes any credits due the LOCAL AGENCY for betterment, depreciation and salvage."

NOTE: For lump sum amounts in excess of \$25,000, the following clause should be added.

"LOCAL AGENCY and OWNER further agree that for lump sum payments in excess of \$25,000 the LOCAL AGENCY shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of LOCAL AGENCY's audit shall be to establish the continued acceptability of using lump sum payments for high cost relocations and shall not in any way affect the amount or acceptability of the lump sum amount herein agreed to. OWNER shall keep supporting detailed records available for LOCAL AGENCY review for a period of one year following OWNER's submittal of final bill."

IV-9. Lump- Sum/Flat Sum SBC Billing Agreements:

"Upon completion of the potholing and relocation work, and within 90 days after receipt of OWNER's bill in quintuplicate, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead; LOCAL AGENCY will pay OWNER the lump sum amount of \$_____. The above lump sum amount for the physical relocation work has been agreed upon between the LOCAL AGENCY and the OWNER and includes any credits due the LOCAL AGENCY for betterment, depreciation, and salvage."

“In addition to the amount specified above, the LOCAL AGENCY will pay the OWNER an additional amount of \$_____ for each pothole location requested by the LOCAL AGENCY in order to determine the location of the OWNER's facilities. It is estimated that _____ pothole locations will be required. The final cost for potholing will be the lump sum amount of \$_____ per pothole location times the actual number of pothole locations.”

NOTE: For lump sum amounts in excess of \$25,000, the following clause should be added.

“LOCAL AGENCY and OWNER further agree that for lump sum payments in excess of \$25,000 the LOCAL AGENCY shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of LOCAL AGENCY's audit shall be to establish the continued acceptability of using lump sum payments for high cost relocations and shall not in any way affect the amount or acceptability of the lump sum amount herein agreed to. OWNER shall keep supporting detailed records available for LOCAL AGENCY review for a period of one year following OWNER's submittal of final bill.”

IV-10. Local Agency's Contractor Performs Portion of Work-Owner Liability:

NOTE: Insert the following Clause after Clause IV-1 or IV-2.

“The OWNER shall pay its share of the actual cost of said work included in the LOCAL AGENCY's highway construction contract within 90 days after receipt of LOCAL AGENCY's bill; compiled on the basis of the actual bid price of said contract. The estimated cost to OWNER for the work being performed by the LOCAL AGENCY's highway contractor is \$_____.”

“In the event actual final relocation costs as established herein are less than the sum of money advanced by OWNER to LOCAL AGENCY, LOCAL AGENCY hereby agrees to refund to OWNER the difference between said actual cost and the sum of money so advanced. In the event that the actual cost of relocation exceeds the amount of money advanced to LOCAL AGENCY, in accordance with the provisions of this Agreement, OWNER hereby agrees to reimburse LOCAL AGENCY said deficient costs upon receipt of an itemized bill as set forth herein.”

Section V. General Conditions:

V-1. Local Agency Liable for Review and Design Costs, and Project Cancellation Procedure Clause:

“All costs accrued by OWNER as a result of LOCAL AGENCY's request of ____ (date) to review, study and/or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement.”

“If LOCAL AGENCY's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, LOCAL AGENCY will notify OWNER in writing, and LOCAL AGENCY reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.”

V-2. For All Owners - Notice of Completion:

“OWNER shall submit a Notice of Completion to the LOCAL AGENCY within 30 days of the completion of the work described herein.”

V-3. Owner to Acquire New Rights of Way:

“Total consideration for rights of way to be acquired by OWNER for this relocation shall not exceed (e.g., \$2,500) unless prior approval is given by the LOCAL AGENCY. Said property shall be appraised and acquired in accordance with lawful acquisition procedures.”

NOTE: A reasonable easement cost limitation should be stated to preclude excessive acquisition cost.

V-4. Local Agency to Provide New Rights of Way Over State Lands:

“Such Easement Deeds as deemed necessary by the LOCAL AGENCY will be delivered to OWNER conveying new rights of way for portions of the facilities relocated under this Agreement over available LOCAL AGENCY owned property outside the limits of the highway right of way.”

“LOCAL AGENCY's liability for the new rights of way will be at the proration shown for the relocation work involved under this Agreement.”

NOTE: New rights of way means a right of way described in the same language as found in the OWNER's document by which it acquired, or held, its original right of way.

V-5. Local Agency to Provide New Rights of Way Over Private Lands:

“LOCAL AGENCY will acquire new rights of way in the name of either the LOCAL AGENCY or OWNER through negotiation or condemnation and when acquired in LOCAL AGENCY's name, shall convey same to OWNER by Easement Deed. LOCAL AGENCY's liability for such rights of way will be at the proration shown for relocation work involved under this Agreement.”

NOTE: New rights of way means a right of way described in the same language as found in the OWNER's document by which it acquired, or held, its original right of way. In those cases where the OWNER requests acquisition be made in their name, it will be permissible to negotiate or condemn in their name; provided the OWNER has the power to condemn and the Local Agency has OWNER's consent for condemnation on OWNER's behalf. The above paragraph should be revised accordingly.

V-6. Joint Use Agreement (JUA) or Consent to Common Use Agreement (CCUA) to be issued:

“Where OWNER has prior rights in areas which will be within the highway right of way and where OWNER's facilities will remain on or be relocated on LOCAL AGENCY highway right of way, a Joint Use Agreement or Consent to Common Use Agreement shall be executed by the parties.”

V-7. Master Agreement Specifies Equal Replacement Rights:

“Upon completion of the work to be done by LOCAL AGENCY in accordance with the above-mentioned plans and specifications, the new facilities shall become the property of OWNER, and OWNER shall have the same rights in the new location that it had in the old location.”

V-8. Federal-Aid Clause - No Master Agreement:

“It is understood that said highway is a federal-aid highway and accordingly, 23 CFR 645 is hereby incorporated into this Agreement.”

V-9. Federal-Aid Clause - Master Agreement:

“It is understood that said highway is a federal-aid highway and accordingly, 23 CFR Part 645 is hereby incorporated into this Agreement by reference; provided, however, the provisions of any agreements entered into between the LOCAL AGENCY and the OWNER pursuant to state law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable federal or state regulatory body and approved by the Federal Highway Administration (FHWA), shall govern in lieu of the requirements of said 23 CFR Part 645.”

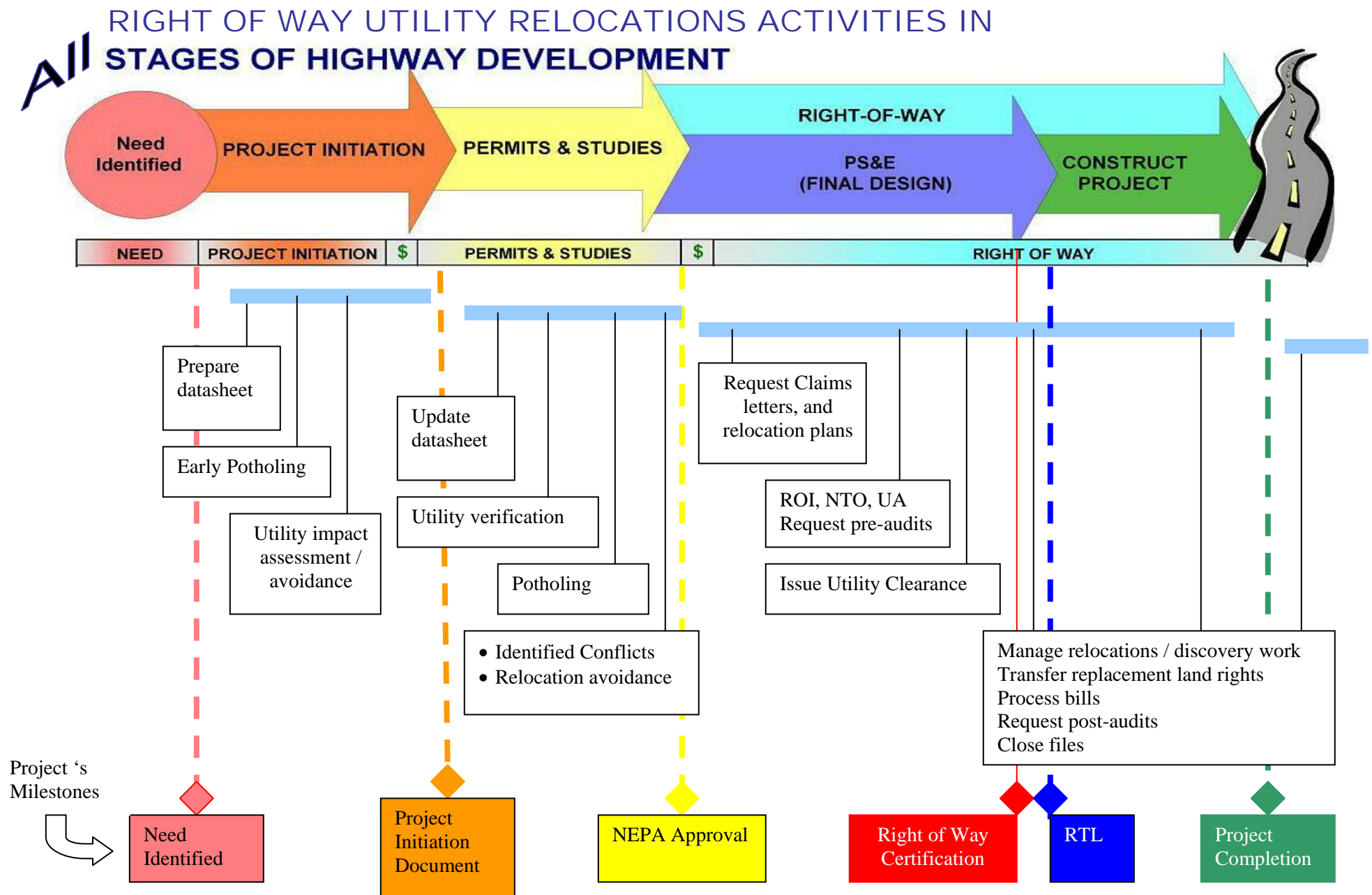
NOTE: The FHWA allows liability to be determined in accordance with the terms of Master Agreements in lieu of otherwise applicable S&H Code sections.

V-10. Facilities Replaced per Liability Determination Under Water Code Sections 7034 & 7035:

“Inasmuch as Water Code Sections (7034) and (7035) require LOCAL AGENCY to be responsible for the structural maintenance of the conduit portion of OWNER's facilities, which transports water under the highway at Engineer's Station _____, LOCAL AGENCY will repair or replace the conduit portion of OWNER's facilities, which lies within the LOCAL AGENCY highway right of way when such becomes necessary unless such repair or replacement is made necessary by negligent or wrongful acts of the OWNER, its agents, contractors or employees; provided that the OWNER shall keep the conduit clean and free from obstruction, debris, and other substances so as to ensure the free passage of water in said conduit. In no event shall LOCAL AGENCY be liable for any betterment, change, or alteration in said facility made by or at the request of the OWNER for its benefit.”

NOTE: See NOTE under Clause I-2 and Section 13.11.05.01 of the ROW Manual.

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